

REMARKS

Claims 25-27 stand rejected under 35 U.S.C. 102(a) and 102(c) as being anticipated by Van Ooijen (EP 0 620 014 A2). Claim 25 has been amended to include the limitation of “applying a composition including saturated and unsaturated fatty acids having from 12 to 22 carbon atoms and ferrous sulfate to an animal bedding material.” Van Ooijen does not disclose the combined use of saturated and unsaturated fatty acids nor the use of ferrous sulfate (a limitation of claim 43, now canceled). Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1-17, 19-22, 25-27, 41, 42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Van Ooijen and Kuhns (EP 0 288 633 A2). Claim 1 has been amended to replace “carboxylic acids” with “a combination of saturated and unsaturated fatty acids” and also to include ferrous sulfate in the composition (a limitation of claim 43, now canceled). Neither Van Ooijen nor Kuhns disclose or suggest the combined use of saturated and unsaturated fatty acids nor the use of ferrous sulfate. Reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1-17, 20-22, 25-27, 41-48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Van Ooijen and Kuhns in view of Wagner et al. (US 4,251,255).

Van Ooijen discloses a method for the control of ammonia emission and odor using naturally occurring oils sources from animals or from plants. (Van Ooijen, Title; and page 2, lines 41-50). These oils are described as containing esters of saturated and/or unsaturated fatty acids (Van Ooijen, page 2, lines 54-55) that may be used alone or admixed with other components, such as aliphatic carboxylic acids. (Van Ooijen, page 2, lines 55-58). However, the fatty acids are taught as being useful only “as an adjuvant for the naturally occurring oils.” (Van Ooijen, page 2, lines 22-23). “Adjuvants are agents which modify the effect of other agents while having few in any direct effects when given by themselves.” (<http://en.wikipedia.org/wiki/Adjuvant>). Accordingly, Van Ooijen attributes very little significance to the use of fatty acids and teaches away from their independent use in the absence

of naturally occurring oils.

Furthermore, Van Ooijen discloses that the oil formulation is “applied to the waste material in an amount which substantially completely covers the exposed surface of the waste material.” (Van Ooijen, page 3, lines 52-54; *emphasis added*). The significance of this application is underscored in Example 1, where “10 litres of a 0.15% ammonia solution in water was placed in a can” such that the total exposed surface area of the solution was 804 cm². The ammonia concentration above the solution was measured with Draeger tubes before and after the surface of the solution was covered with 100 g of soya bean oil. (Van Ooijen, page 4, lines 5-8; Example 1). Covering the surface of the ammonia emitting substance with a naturally occurring oil reduced the ammonia emission from 65-70 ppm ammonia to 10 ppm ammonia. (Van Ooijen, page 4, lines 9-17; Example 1). Van Ooijen uses the oil as a floating barrier over an aqueous solution and does not teach or suggest the in situ application to an animal bedding material. It would not be practical or possible to cover and form a barrier over material that is being used as animal bedding.

Kuhns discloses that “an alkali metal formaldehydebisulfite effectively eliminates odors caused by matter of fecal, urinary, and glandular origin.” (Kuhns, page 3, lines 42-43). “The alkali metal formaldehydebisulfite may be utilized in the dry form with a variety of inert materials such as diluents, carriers, excipients, lubricants, disintegrants, colorants, disinfectants and mixtures thereof.” (Kuhns, page 4, lines 29-30; *emphasis added*). Fatty acids may be used as a lubricant to reduce friction during filling or tableting processes. (Kuhns, page 4, lines 36-40). Accordingly, Kuhns attributes very little significance to the use of fatty acids and teaches away from their independent use in the absence of tableting a composition including alkali metal formaldehydebisulfite.

Wagner discloses fertilizers and soil improving agents including azulmic acids that have been stabilized by condensation with carbonyl compounds. (Wagner, Abstract). Wagner’s fertilizer may include wood flour (Wagner, col. 5, lines 42-44), but there is no specific mention of “animal bedding material” and wood flour is not known to be used in such application.

Independent claims 1 and 25 have both been amended so that the method comprises the “in situ application” of a composition including “saturated and unsaturated fatty acids” and ferrous sulfate (a limitation of claim 43, now canceled) to “an animal bedding material.” As amended, claims 1 and 25 are believed to be allowable.

Applicant takes issue with the Examiner’s characterization that “VAN OOIJEN & KUHNS (above) provides the essence of the instant invention.” (Office Action dated Sept. 20, 2007, page 4, 3rd paragraph). Applicant’s attorney believes that there is no recognition of an “essence” in patent law and that a proper patentability analysis must focus on the language of the claims.

The Examiner makes out the rejection asserting that:

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a natural composition, to use one of VAN OOIJEN & KUHNS modified with WAGNER to provide acceptable application. WAGNER teaches [that] one having ordinary skill in the art would be motivated to perform this modification in order to provide useful agricultural compositions. (Office Action dated Sept. 20, 2007, page 4, lines 21-26).

The Examiner’s foregoing assertion is vague and unsupported by citations to the references themselves. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements: instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006). Perhaps the Examiner is asserting that the motivation to combine the references is “to provide acceptable application” or “to provide useful agricultural compositions.” Both of these basis are vague, overly general, lack an explicit basis in the references, and lack a sufficient rational underpinning to support a legal conclusion of obviousness.

Independent claims 1 and 25 have been amended to include the limitation of “in situ application” of a composition to an animal bedding material. The phrase “in situ” appears in the title of the present application and, consistent with the entirety of the specification, indicates that the composition is added to material that is intended to be used as animal bedding, as compared

with material that was previously used as animal bedding and is now being discarded. The composition is applied to the animal bedding material in its natural or original position or place as animal bedding. Even if used animal bedding material might find use in fertilizer or other useful agricultural compositions, this would not provide a suggestion or motivation for in situ application of Wagner's fertilizer to animal bedding material. Reconsideration and withdrawal of the rejection is respectfully requested.

Applicant believes this Reply is fully responsive to all outstanding issues. In the event there are additional charges in connection with the filing of this Response, the Commissioner is hereby authorized to charge the Deposit Account No. 50-0714/BION/0013 of the firm of the below-signed attorney in the amount of any necessary fee.

Respectfully submitted,

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